

Kelly M. Wills, Esq.  
Thomas J. Harrington, Esq.  
GARLINGTON, LOHN & ROBINSON, PLLP  
199 West Pine • P. O. Box 7909  
Missoula, MT 59807-7909  
Telephone: (406) 523-2500  
Telefax: (406) 523-2595

Attorneys for Montana Insurance Guaranty Association

**FILED**

**MAY 31 2005**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ALEXIS RAUSCH, et al.,

Petitioners,

v.

MONTANA STATE FUND,

Respondent/Insurer,

and

v.

JEREMY RUHD,

Petitioner,

v.

LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Respondent/Insurer.

WCC No. 9907-8274R1

MONTANA INSURANCE GUARANTY  
ASSOCIATION'S SECOND RESPONSE  
TO SUMMONS

COMES NOW the Montana Insurance Guaranty Association, by and through counsel, and hereby files this Second Response to Summons. The Montana Insurance Guaranty Association incorporates by reference the information and assertions previously set forth in its Response to Summons as well as its Status Report and Request for Additional Time.

As this Court is aware, the Western Guaranty Fund is adjusting claims on behalf of the Montana Insurance Guaranty Association. The Western Guaranty Fund's computer system does not allow it to draft and run computer queries which would identify and produce the information requested by this Court. To comply with the Summons, the Western Guaranty Fund had to survey its adjusters, who then printed voluminous file records of the claims which may qualify for additional *Rausch* benefits. An examination of the Western Guaranty Fund's printouts identified nineteen claimants who were classified permanently, totally disabled. An additional two claimants have been receiving TTD benefits for a period of eighteen months or longer. However, the entitlement dates for the vast majority of those twenty-one claimants occurred on or before June 30, 1991. In fact, only five claimants had entitlement dates occurring on or after July 1, 1991. Of those five claimants, two had received payment of their impairment awards prior to their classification as PTD. Therefore, only three claimants were identified who may qualify for *Rausch* benefits:

1. Alvera McClain  
3623 E. Florance  
Meridian, ID 83642  
Western Guaranty Fund Claim No. 0106MT3329  
Date of injury: February 3, 1997  
Explanation: The file records indicate that a 25% impairment rating was rendered on February 21, 2001. However, the Montana Insurance Guaranty Association has a limited exposure in Ms. McClain's claim because Reliance (now insolvent) was an excess carrier for the Montana School Groups Insurance Association. The underlying self-retention limits have not been exhausted and it is uncertain whether the Montana School Groups Insurance Association has already paid Ms. McClain's impairment award.
2. Phil Murray  
511 Glacier View  
Valier, MT 59486  
Western Guaranty Fund Claim No. 0206MT0002  
Date of Injury: October 21, 1998  
Explanation: No impairment rating appears in the Western Guaranty Fund's file.
3. Michael Kuntz  
3418 Morris Road  
Charlo, MT 59824  
Western Guaranty Fund Claim No. 0206MT0008

Date of injury: April 28, 2000

Explanation: No impairment rating appears in the Western Guaranty Fund's file.

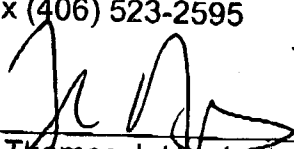
The Western Guaranty Fund is conducting another survey of its adjusters to have them specifically focus on the payment of TTD benefits so it can satisfactorily confirm that only two claimants have received TTD benefits for a period of eighteen months or longer. To accomplish this task, the Montana Insurance Guaranty Association requests this Court grant it another extension of forty-five (45) days. If the Court grants an extension, the Montana Insurance Guaranty Association will file a Status Report in forty-five (45) days which outlines the progress and results of the Western Guaranty Fund's second survey of its adjusters.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of May, 2005.

Attorneys for Montana State Fund and Montana Insurance Guaranty Association

GARLINGTON, LOHN & ROBINSON, PLLP  
199 W. Pine • P. O. Box 7909  
Missoula, MT 59807-7909  
Telephone (406) 523-2500  
Telefax (406) 523-2595

By

  
Thomas J. Harrington

### CERTIFICATE OF MAILING

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Montana State Fund and Montana Insurance Guaranty Association, hereby certify that on this 31<sup>st</sup> day of May, 2005, I mailed a copy of the foregoing *Montana Insurance Guaranty Association's Second Response to Summons*, postage prepaid, to the Clerk of the Workers' Compensation Court only (pursuant to Court order):

Pat Kessner, Clerk  
Workers' Compensation Court  
P.O. Box 537  
Helena, MT 59624-0537

  
Sandra E. Goodman

MONTANA INSURANCE GUARANTY ASSOCIATION'S  
SECOND RESPONSE TO SUMMONS

# GARLINGTON, LOHN & ROBINSON, PLLP

Attorneys At Law  
199 West Pine • P. O. Box 7909  
Missoula, Montana 59807-7909  
Telephone (406) 523-2500  
Telefax (406) 523-2595  
www.garlington.com

## TELEFAX COVER SHEET

Date: May 31, 2005

Time: 4:30

Total Faxed Pages: 4

X Original Will Follow By First Class Mail  
Original Will Not Follow

NAMED ADDRESSEE:

Patricia J. Kessner

ADDRESSEE COMPANY NAME:

Montana Workers' Compensation Court

FAX TELEPHONE NO.:

(406) 444-7798

FROM:

Thomas J. Harrington

RE:

*Rausch v. Montana State Fund*  
*WCC No. 9907-8274R1*

GLR FILE NO.:

1914- 150

GLR FAX OPERATOR:

Sandra E. Codman

The information contained in this facsimile message may be privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via U.S. mail.

Attached for filing is the *Montana Insurance Guaranty Association's Second Response to Summons*. The original of this document will follow by First Class Mail.